

## DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-206603

DATE: August 31, 1982

MATTER OF: WFT Service Corp.

## DIGEST:

1. Agency properly rejected bid to supply laundering system which materially deviated from the IFB's requirement for a keyboard programmable micro-processor control console. Offer of a pegboard programmable console was not minor deviation which agency should waive since deviation significantly jeopardizes the system's security.
2. A bid that offers terms and conditions that are inconsistent with the Federal, State and Local Taxes clause and the Payments clause of the solicitation is nonresponsive and cannot be accepted.

WFT Service Corp. (WFT) protests the rejection of its bid by the Department of Health and Human Services (HHS) under invitation for bids (IFB) No. 279-81-0037B. The IFB was issued by St. Elizabeth's Hospital, Washington, D.C. to acquire an automatic laundry washing system. HHS rejected WFT's bid as nonresponsive because the offered system deviated from the IFB specifications in several respects. WFT contends that any deviations were merely "minor variations," and that its system performs all of the laundering functions and services required by the specifications. We deny the protest.

The test of a bid's responsiveness is whether the bid as submitted complies with the IFB's material provisions without exception. See Ven-Tel, Inc., B-203397, July 1, 1981, 81-2 CPD 3. While an agency must either waive or afford the bidder an opportunity to cure a minor informality or irregularity which pertains to some immaterial or inconsequential defect

or variation from the IFB's requirements, a deviation which affects price, quality, quantity or delivery, in more than a trivial manner when compared to the total cost or scope of the contemplated contract, may not be waived. See Champion Road Machinery International Corporation, B-200678, July 13, 1981, 81-2 CPD 27.

WFT's bid is clearly nonresponsive under this standard. Although the equipment offered deviated from the specifications in several respects, we will discuss one deviation only since it was emphasized by the parties and it alone suffices to render the bid nonresponsive.

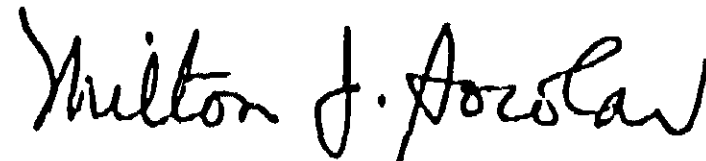
The IFB required a control console consisting of "a field-programmable microprocessor with video display screen and keyboard terminal"; WFT offered a console with a pegboard type of programmer. HHS explains that this deviation significantly affects the quality of the laundering system in that the pegboard control panel will allow anyone to change the wash program merely by moving the pegs, whereas no one can tamper with the keyboard console without entering the correct access code. Also, adds HHS, the agency can easily protect the integrity of the machines' programming simply by changing the access code. HHS asserts it had specifically considered the acceptability of pegboard models prior to bid opening, and rejected them for the above reasons. Thus, the keyboard programmable console was, in the agency's view, a feature which materially affected the quality of the required laundering system. Since WFT's bid significantly deviated from that requirement, it was properly rejected as nonresponsive.

Moreover, our own examination of WFT's bid reveals that it was nonresponsive in other respects that are not related to the specifications. For example, the bid is exclusive of "any Federal, State, county or other local" taxes, contrary to the IFB which requires that these taxes be included in the bid price. The bid also establishes payment terms that are inconsistent with the Payments clause of the solicitation--the bid requires a 35 percent cash payment with the purchase order, 55 percent cash payment on arrival, and the final 10 percent payment 30 days after startup of the equipment or 60 days after

arrival, whichever is earlier. The standard payments provision provides for payment only after acceptance for the Government, which in this case was to occur after installation.

To the extent that WFT might be suggesting that the keyboard mode requirement or other IFB provisions overstated the agency's needs, such a protest would be untimely. See Ven-Tel, Inc., supra. Our Bid Protest Procedures require that protests based on alleged improprieties in an IFB, which are apparent prior to bid opening, must be filed prior to bid opening. 4 C.F.R. § 21.1(b)(1) (1982). WFT did not submit its protest until after bid opening.

The protest is denied.



Acting Comptroller General  
of the United States